

## § 73.871

## 47 CFR Ch. I (10–1–11 Edition)

and for major modifications in authorized LPFM stations will be accepted only during the appropriate window. Applications submitted prior to the window opening date identified in the Public Notice will be returned as premature. Applications submitted after the deadline will be dismissed with prejudice as untimely.

(c) Applications subject to paragraph (b) of this section that fail to meet the § 73.807 minimum distance separations with respect to all applications and facilities in existence as the date of the pertinent public notice in paragraph (b) of this section other than to LPFM station facilities proposed in applications filed in the same window, will be dismissed without any opportunity to amend such applications.

(d) Following the close of the window, the Commission will issue a Public Notice of acceptance for filing of applications submitted pursuant to paragraph (b) of this section that meet technical and legal requirements and that are not in conflict with any other application filed during the window. Following the close of the window, the Commission also will issue a Public Notice of the acceptance for filing of all applications tentatively selected pursuant to the procedures for mutually exclusive LPFM applications set forth at § 73.872. Petitions to deny such applications may be filed within 30 days of such public notice and in accordance with the procedures set forth at § 73.3584. A copy of any petition to deny must be served on the applicant.

(e) Minor change LPFM applications may be filed at any time, unless restricted by the staff, and generally, will be processed in the order in which they are tendered. Such applications must meet all technical and legal requirements applicable to new LPFM station applications.

(f) New entrants seeking to apply for unused or unwanted time on a time-sharing frequency will only be accepted during an open filing window, specified pursuant to paragraph (b) of this section.

[65 FR 7640, Feb. 15, 2000, as amended at 65 FR 67304, Nov. 9, 2000; 70 FR 39186, July 7, 2005; 73 FR 3217, Jan. 17, 2008]

### § 73.871 Amendment of LPFM broadcast station applications.

(a) New and major change applications may be amended without limitation during the pertinent filing window.

(b) Amendments that would improve the comparative position of new and major change applications will not be accepted after the close of the pertinent filing window.

(c) Only minor amendments to new and major change applications will be accepted after the close of the pertinent filing window. Subject to the provisions of this section, such amendments may be filed as a matter of right by the date specified in the FCC's Public Notice announcing the acceptance of such applications. For the purposes of this section, minor amendments are limited to:

(1) Filings subject to paragraph (c)(5), site relocations of 3.2 kilometers or less for LP10 stations;

(2) Filings subject to paragraph (c)(5), site relocations of 5.6 kilometers or less for LP100 stations;

(3) Changes in ownership where the original party or parties to an application retain more than a 50 percent ownership interest in the application as originally filed;

(4) Universal voluntary time-sharing agreements to apportion vacant time among the licensees;

(5) Other changes in general and/or legal information; and

(6) Filings proposing transmitter site relocation to a common location submitted by applicants that are parties to a voluntary time-sharing agreement with regard to their stations pursuant to § 73.872 paragraphs (c) and (e).

(d) Unauthorized or untimely amendments are subject to return by the FCC's staff without consideration.

[66 FR 23863, May 10, 2001, as amended at 70 FR 39186, July 7, 2005; 73 FR 3217, Jan. 17, 2008]

### § 73.872 Selection procedure for mutually exclusive LPFM applications.

(a) Following the close of each window for new LPFM stations and for modifications in the facilities of authorized LPFM stations, the Commission will issue a public notice identifying all groups of mutually exclusive

applications. Such applications will be awarded points to determine the tentative selectee. Unless resolved by settlement pursuant to paragraph (e) of this section, the tentative selectee will be the applicant within each group with the highest point total under the procedure set forth in this section, except as provided in paragraphs (c) and (d) of this section.

(b) Each mutually exclusive application will be awarded one point for each of the following criteria, based on application certification that the qualifying conditions are met:

(1) *Established community presence.* An applicant must, for a period of at least two years prior to application, have been physically headquartered, have had a campus, or have had seventy-five percent of its board members residing within 10 miles of the coordinates of the proposed transmitting antenna. Applicants claiming a point for this criterion must submit the documentation set forth in the application form at the time of filing their applications.

(2) *Proposed operating hours.* The applicant must pledge to operate at least 12 hours per day.

(3) *Local program origination.* The applicant must pledge to originate locally at least eight hours of programming per day. For purposes of this criterion, local origination is the production of programming, by the licensee, within ten miles of the coordinates of the proposed transmitting antenna.

(c) *Voluntary time-sharing.* If mutually exclusive applications have the same point total, any two or more of the tied applicants may propose to share use of the frequency by submitting, within 90 days of the release of a public notice announcing the tie, a time-share proposal. Such proposals shall be treated as minor amendments to the time-share proponents' applications, and shall become part of the terms of the station authorization. Where such proposals include all of the tied applications, all of the tied applications will be treated as tentative selectees; otherwise, time-share proponents' points will be aggregated to determine the tentative selectees.

(1) Time-share proposals shall be in writing and signed by each time-share

proponent, and shall satisfy the following requirements:

(i) The proposal must specify the proposed hours of operation of each time-share proponent;

(ii) The proposal must not include simultaneous operation of the time-share proponents; and

(iii) Each time-share proponent must propose to operate for at least 10 hours per week.

(2) Where a station is authorized pursuant to a time-sharing proposal, a change of the regular schedule set forth therein will be permitted only where a written agreement signed by each time-sharing permittee or licensee and complying with requirements in paragraphs (c)(1)(i) through (iii) of this section is filed with the Commission, Attention: Audio Division, Media Bureau, prior to the date of the change.

(3) Where a station is authorized pursuant to a voluntary time-sharing proposal, the parties to the time-sharing agreement may apportion among themselves any air time that, for any reason, becomes vacant.

(4) Successive license terms granted under paragraph (d) may be converted into voluntary time-sharing arrangements renewable pursuant to § 73.3539 by submitting a universal time-sharing proposal.

(d) *Successive license terms.* (1) If a tie among mutually exclusive applications is not resolved through voluntary time-sharing in accordance with paragraph (c) of this section, the tied applications will be reviewed for acceptability and applicants with tied, grantable applications will be eligible for equal, successive, non-renewable license terms of no less than one year each for a total combined term of eight years, in accordance with § 73.873. Eligible applications will be granted simultaneously, and the sequence of the applicants' license terms will be determined by the sequence in which they file applications for licenses to cover their construction permits based on the day of filing, except that eligible applicants proposing same-site facilities will be required, within 30 days of written notification by the Commission staff, to submit a written settlement agreement as to construction and

### § 73.873

license term sequence. Failure to submit such an agreement will result in the dismissal of the applications proposing same-site facilities and the grant of the remaining, eligible applications.

(2) Groups of more than eight tied, grantable applications will not be eligible for successive license terms under this section. Where such groups exist, the staff will dismiss all but the applications of the eight entities with the longest established community presences, as provided in paragraph (b)(1) of this section. If more than eight tied, grantable applications remain, the applicants must submit, within 30 days of written notification by the Commission staff, a written settlement agreement limiting the group to eight. Failure to do so will result in dismissal of the entire application group.

(3) If successive license terms granted under this section are converted into universal voluntary time-sharing arrangements pursuant to paragraph (c)(4) of this section, the permit or license is renewable pursuant to §§ 73.801 and 73.3539.

(e) Mutually exclusive applicants may propose a settlement at any time during the selection process after the release of a public notice announcing the mutually exclusive groups. Settlement proposals must include all of the applicants in a group and must comply with the Commission's rules and policies regarding settlements, including the requirements of §§ 73.3525, 73.3588, and 73.3589. Settlement proposals may include time-share agreements that comply with the requirements of paragraph (c) of this section, provided that such agreements may not be filed for the purpose of point aggregation outside of the 90 day period set forth in paragraph (c) of this section.

[65 FR 7640, Feb. 15, 2000, as amended at 65 FR 67304, Nov. 9, 2000; 67 FR 13232, Mar. 21, 2002; 73 FR 3217, Jan. 17, 2008]

### § 73.873 LPFM license period.

(a) Initial licenses for LPFM stations not subject to successive license terms will be issued for a period running until the date specified in § 73.1020 for full service stations operating in the LPFM station's state or territory, or if issued

### 47 CFR Ch. I (10–1–11 Edition)

after such date, determined in accordance with § 73.1020.

(b) The station license period issued under the successive license term tiebreaker procedures will be determined pursuant to § 73.872(d) and shall be for the period specified in the station license.

(c) The license of an LPFM station that fails to transmit broadcast signals for any consecutive 12-month period expires as a matter of law at the end of that period, notwithstanding any provision, term, or condition of the license to the contrary.

### § 73.875 Modification of transmission systems.

The following procedures and restrictions apply to licensee modifications of authorized broadcast transmission system facilities.

(a) The following changes are prohibited:

(1) Those that would result in the emission of signals outside of the authorized channel exceeding limits prescribed for the class of service.

(2) Those that would cause the transmission system to exceed the equipment performance measurements prescribed in § 73.508.

(b) The following changes may be made only after the grant of a construction permit application on FCC Form 318.

(1) Any construction of a new tower structure for broadcast purposes, except for replacement of an existing tower with a new tower of identical height and geographic coordinates.

(2) Any change in station geographic coordinates, including coordinate corrections and any move of the antenna to another tower structure located at the same coordinates.

(3) Any change in antenna height more than 2 meters above or 4 meters below the authorized value.

(4) Any change in channel.

(c) The following LPFM modifications may be made without prior authorization from the Commission. A modification of license application (FCC Form 319) must be submitted to the Commission within 10 days of commencing program test operations pursuant to § 73.1620. For applications filed